

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

LEONIDAS SIERRA,

Plaintiff,

9:22-cv-711 (BKS/TWD)

v.

CAPTAIN ZERNIAK, et al.,

Defendants.

Appearances:

Plaintiff pro se:

Leonidas Sierra
66094-054
FCI Hazelton
P.O. BOX 5000
Bruceton Mills, WV 26525

For Defendants:

Letitia A. James
Attorney General of the State of New York
Aimee Cowan
Assistant Attorney General, of Counsel
300 South State Street - Suite 300
Syracuse, NY 13202

Hon. Brenda K. Sannes, Chief United States District Judge:

MEMORANDUM-DECISION AND ORDER

Plaintiff Leonidas Sierra, an inmate, commenced this civil rights action asserting claims under 42 U.S.C. § 1983 arising out of his incarceration at the Upstate Correctional Facility and Auburn Correctional Facility. (Dkt. No. 13). On June 14, 2023, Defendants Sandra Amoia, Anthony Annucci, and Joseph Bellnier filed a motion to dismiss under Fed. R. Civ. P. 12(b)(6) for failure to state a claim. (Dkt. No. 54). The motion is fully briefed. (Dkt. Nos. 64, 66). This matter was assigned to United States Magistrate Judge Thérèse Wiley Dancks who, on January

26, 2024, issued a Report-Recommendation and Order recommending that Defendants' motion to dismiss be granted as to Defendants Annucci and Amoia, but be denied as to Defendant Bellnier. (Dkt. No. 69, at 16). Magistrate Judge Dancks advised the parties that under 28 U.S.C. § 636(b)(1), they had fourteen days within which to file written objections to the report, and that the failure to object to the report within fourteen days would preclude appellate review. (*Id.* at 17). No objections to the Report-Recommendation have been filed.

As no objection to the Report-Recommendation has been filed, and the time for filing objections has expired, the Court reviews the Report-Recommendation for clear error. *See Petersen v. Astrue*, 2 F. Supp. 3d 223, 228–29 (N.D.N.Y. 2012); Fed. R. Civ. P. 72(b) advisory committee's note to 1983 amendment. Having reviewed the Report-Recommendation for clear error and found none, the Report-Recommendation is adopted in its entirety.

For these reasons, it is

ORDERED that the Report-Recommendation (Dkt. No. 69) is **ADOPTED** in its entirety; and it is further


ORDERED that Defendants' motion to dismiss (Dkt. No. 54) is **GRANTED IN PART AND DENIED IN PART**; and it is further

ORDERED that Plaintiff's Eighth Amendment claims against Defendants Annucci and Amoia are **DISMISSED**; and it is further

ORDERED that the Clerk serve a copy of this Order upon the parties in accordance with the Local Rules.

IT IS SO ORDERED.

Dated: February 28, 2024
Syracuse, New York


Brenda K. Sannes
Chief U.S. District Judge